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No. 1050

Supreme Court of the United States.

OCTOBER TERM, 1946.

CHARLES F. CONNORS, TRUSTEE IN BANKRUPTCY OF THE AGAWAM RACING AND BREEDERS' ASSOCIATION, INC., *Petitioner,*

v.

TOWN OF AGAWAM.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

AND

PETITIONER'S BRIEF.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

This petition is brought to avoid a forfeiture. The Referee in Bankruptcy and the Judge of the District Court who affirmed his orders have given full protection to every legal, equitable and moral right possessed by the Town of Agawam.

Nevertheless, the Circuit Court of Appeals has reversed the lower Court. We respectfully submit that this reversal is the result of a misconception of the law. If this reversal stands, it will give the Town of Agawam many thousands of dollars in excess of its lawful taxes, with all interest and penalties added. It will strip the creditors of this bankrupt of their sole asset. No court of equity can justify

such a result. There is something radically wrong when the Circuit Court of Appeals feels obliged to say:

> **"This Court is impressed by the apparent inequity of this result for which the Town of Agawam contends. The general creditors lose what may be the sole substantial asset of the bankrupt. The Town acquires property presumably of a value in excess of its original tax claim. We, however, consider this result unavoidable on the basis of the law as we understand it" (R. p. 96).**

The petitioner, Charles F. Connors, is the trustee in bankruptcy of the Agawam Racing and Breeders' Association, Inc., duly appointed and qualified as such by the United States District Court for the District of Massachusetts sitting in bankruptcy. He prays that a writ of certiorari issue to review a judgment of the Circuit Court of Appeals for the First Circuit entered in the above case on January 7, 1947 (R. p. 98), reversing a judgment of the District Court of the United States for the District of Massachusetts (R. pp. 41-42), which affirmed two orders of Hon. Arthur Black, Referee in Bankruptcy (R. pp. 39-40).

Opinions Below.

The opinion of the Circuit Court of Appeals (R. pp. 88-97) was filed on January 7, 1947, and is not yet reported. The opinion of the District Court Judge is printed in the record at page 42 and is reported in 65 F. Supp. 755. The findings of the Referee are in the record at pages 13 to 20, inclusive, and his opinion and order are at pages 20 to 24, inclusive.

Jurisdiction.

The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code; 28 U.S.C. Sec. 347 (a), as amended by the Act of February 13, 1925. The petitioner's motion to stay the mandate was allowed on January 15, 1947 (R. p. 98).

Statement.

The Agawam Racing and Breeders' Association, Inc., was organized as a Massachusetts business corporation for the purpose of conducting a pari-mutuel horse racing establishment in the Town of Agawam, located about 6 miles northwest of Springfield, Massachusetts. Due to financial burdens, on December 23, 1935, the corporation filed a petition for reorganization under Section 77B of the Federal Bankruptcy Act. The Town of Agawam appeared in those proceedings. The District Court at Boston entered an order confirming the debtor's plan of reorganization on December 22, 1937, but no final decree was ever entered terminating the proceedings.

In the year 1938 the Association conducted its last annual racing meet, and in the fall of that year the voters of Hampden County voted to terminate horse racing in that county and the racing plant, consisting of three parcels comprising 342 acres of land with valuable buildings and grandstands thereon, has remained idle and inactive ever since. The Association has at all times remained in actual physical custody and possession of the premises (R. p. 14, No. 4).

The assessors of the Town valued the land and buildings in the year 1938 at $500,000, and thereafter for the next three years at substantially the same figure, in spite of the

fact that the plant remained closed and never operated after the meet of 1938 (R. pp. 15; 67).

With no operating income and faced with an oppressive tax burden, the Racing Association defaulted in payment of the 1938 real estate tax, and on August 23, 1939, the Tax Collector gave a deed to the Town for non-payment thereof (R. p. 50). On November 26, 1941 (after lapse of two years from delivery of deed as required by statute), the Town of Agawam filed petitions in the Land Court of the Commonwealth of Massachusetts to secure decrees foreclosing the Association's statutory right of redemption.

By the tax deed the Town acquired a form of title which it held merely as security for the unpaid taxes; title would only become absolute in the Town after foreclosure of the debtor's right of redemption by appropriate decree signed and entered in the proceedings instituted in the Land Court. (See Massachusetts Statutes quoted foot of opinion of Circuit Court of Appeals, R. p. 89, and appendix to our brief herewith.)

Hearings on the foreclosure petitions were adjourned from time to time, and by stipulation and order of the Land Court the time to redeem was also extended during which time the Association was striving to compromise with the Town and its officials the burdensome tax liability levied against it. Finally the matter was set down for entry of the final decree at 12 o'clock noon on July 14, 1944. In a last effort to protect the creditors and bondholders a voluntary petition in bankruptcy was filed in Boston on the same day at 9.50 a.m., and the Court forthwith entered an order of adjudication and referred the matter to the local Referee in Bankruptcy.

In recognition of judicial courtesy, and to avoid collision with the State Court, immediately upon adjudication the Referee notified the Judge of the Land Court and counsel

to the Town thereof by delivery of a letter seasonably requesting a brief respite in order that the rights of all parties might be considered and protected (R. pp. 48-49). The Judge of the Land Court, admittedly aware of the pendency of the bankruptcy and appreciating the rights of the Association had passed under the supervision of the Bankruptcy Court (R. p. 55), nevertheless proceeded to hear the parties and allowed the motion for a decree on July 14th; the decree was not entered until July 21, 1944 (R. pp. 53-54).

In the meantime a Receiver was appointed by the Referee in Bankruptcy. After notice to all parties, on July 19, 1944, the Referee enjoined and restrained the Town and its officers from proceeding to secure the entry of a final decree in the Land Court, and further enjoined them from transferring or dealing with the real estate (R. pp. 56-57). On the same day the Receiver filed in the Land Court a notice of adjudication and motion to stay proceedings therein. This was heard on July 21, 1944, and after denial thereof, over the protest of the Receiver and his counsel, the Land Court Judge on the same day signed and entered the decree purportedly foreclosing the right of redemption. Thus, it is respectfully submitted, the Land Court attempted to exterminate all rights of redemption and declare a complete forfeiture in favor of the Town while the property, or in any event the right of redemption, was actually under the paramount jurisdiction and protection of the Federal Court.

There is a valuable equity in the real estate above the Town's claim for unpaid taxes (R. pp. 31-32; 69) which the Bankruptcy Court is striving to protect and preserve for creditors of the bankrupt.

Action of the Courts Below.

Following the repudiation by the Town of a formal compromise agreement which had been approved at a town meeting (R. p. 18; Opinions of District Court, R. p. 45, and C.C.A., R. pp. 90-91) on October 2, 1945, the Trustee filed a petition to sell the racing plant free of liens, and the Referee entered an order thereon allowing the same, with a proviso that the sale must be for a sum not less than the amount of taxes overdue, and any lien which the Town had was to be considered as transferred to the proceeds of sale (R. p. 24). The Referee also denied a motion to vacate the restraining order previously issued against the Town and its officials on July 19, 1944. These orders were affirmed by the District Court (R. pp. 41-42).

The Circuit Court of Appeals reversed the judgment of the District Court affirming these orders (R. p. 98).

Questions Presented.

1. Did the Circuit Court of Appeals correctly rule that the Federal Court did not have paramount jurisdiction, upon an adjudication in bankruptcy, to assume supervision and control of all property and property rights possessed by or belonging to the bankrupt?

2. Did the Circuit Court of Appeals correctly rule that even after an adjudication in bankruptcy the taxpayer's right of redemption "which vested in the trustee in bankruptcy upon the filing of the petition" (R. pp. 93-94) remained subject to the sole and exclusive jurisdiction and control of the Massachusetts Land Court?

3. Did the Circuit Court of Appeals err in failing to recognize and apply the principle that the Bankruptcy Court has jurisdiction to ascertain the validity and extent

of all liens and to determine the method of their liquidation?

4. Did the Circuit Court of Appeals correctly conclude (R. p. 97) that the Referee in Bankruptcy lacked the authority to issue the restraining order against the Town of Agawam and its officials and to order a sale of the racing plant free and clear of all liens?

5. Did the failure or refusal of the Massachusetts Land Court to grant a respite of at least sixty days to the bankruptcy estate violate the provisions of Section 11 e of the Bankruptcy Act and thus render the subsequent decree of foreclosure entered on July 21, 1944, null and void?

6. Did the pendency of the reorganization proceedings under Section 77B of the Bankruptcy Act at the time the Town of Agawam filed its petition to foreclose the debtor's right of redemption deprive the State Land Court of jurisdiction to entertain such a proceeding?

Reasons for Granting the Writ.

The petitioner respectfully urges that the record in the instant case and the decision of the Circuit Court of Appeals for the First Circuit warrant the granting of a writ of certiorari because—

1. The opinion and judgment of the Circuit Court of Appeals in the instant case are at great variance with the law established in *Van Huffel* v. *Harkelrode*, 284 U.S. 225. This doctrine is clearly reviewed and affirmed by Mr. Justice Douglas in *Gardner, Trustee*, v. *State of New Jersey*, decided by this Court on January 20, 1947 (now reported in 91 Law. Ed. 410), and the authorities therein cited.

2. If permitted to stand, the ruling in the instant case will cause hopeless chaos, confusion and uncertainty in the administration of the Federal Bankruptcy Act.

3. There is a conflict with the decision of the Circuit Court of Appeals for the Seventh Circuit in the case of *In re Argyle-Lake Shore Corp.*, 78 F. (2d) 491, dealing with substantially the same matter.

4. A serious conflict of jurisdiction between State and Federal Courts is presented concerning the paramount jurisdiction of the United States District Court sitting in bankruptcy.

Conclusion.

For the foregoing reasons it is respectfully submitted that the within petition should be granted.

CHARLES F. CONNORS, Trustee in Bankruptcy of Agawam Racing and Breeders' Association, Inc.,
By his Attorneys,
David J. Cohen,
Edward J. Flavin.

Supreme Court of the United States.

OCTOBER TERM, 1946.

CHARLES F. CONNORS, TRUSTEE IN BANKRUPTCY OF THE AGAWAM RACING & BREEDERS' ASSOCIATION, INC., *Petitioner,*

v.

TOWN OF AGAWAM.

BRIEF FOR CHARLES F. CONNORS.

This case presents a conflict between the Federal Court sitting in bankruptcy and a State Court seeking to foreclose the bankrupt's right to redeem its real estate after the bankrupt's adjudication and full notice thereof to the State Court.

The issues involved in this appeal merit the careful consideration of this Court because they affect the fundamental concept of bankruptcy administration.

It is important, of course, that justice be done to this particular bankrupt, and its creditors, but it is far more important that the confusion created by the decision of the Circuit Court of Appeals in this case be dispelled.

It is vital that this Court solve the conflict between the various Circuit Courts of Appeals and speak the final word.

Opinions Below.

The opinion of the Circuit Court of Appeals is not yet reported; it appears on pages 88 to 97, inclusive, of the record accompanying this petition. The opinion of Judge Sweeney sitting in the District Court is reported in 65 F. Supp. 755, and at pages 42-48 of the record, and the opinion of the Referee in Bankruptcy is at pages 20 to 24 of the record.

Jurisdiction.

The judgment of the Circuit Court of Appeals was entered January 7, 1947 (R. p. 98). This is a petition for the issuance by the Supreme Court of the United States of a writ of certiorari to the Circuit Court of Appeals for the First Circuit under the authority of Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

Facts.

The facts are set forth in the petition herewith and are stated by the Referee (R. pp. 13-20), by Judge Sweeney (R. pp. 42-48), and again by the Circuit Court of Appeals (R. pp. 88-97). They are not in dispute.

Judicial Proceedings to Date.

I.

Reorganization under Section 77B.

On December 23, 1935, Agawam Racing Association filed a petition for reorganization under Section 77B in the District Court at Boston. This was four years before the

Town of Agawam received its first tax collector's deed and six years before the Town moved to foreclose the bankrupt's right of redemption.

No final decree was ever entered in these proceedings. They are still pending.

II.

Proceedings in the Massachusetts Land Court.

In August, 1939, the Town of Agawam took from the Collector of Taxes a so-called tax collector's deed, which under Massachusetts law is merely "security for the repayment of the purchase price, with all intervening costs . . ." General Laws, c. 60, sec. 45, as amended by St. 1938, c. 339, sec. 1 (App. p. 27).

A little more than two years later the Town, in compliance with the Massachusetts law, filed a petition in the Land Court to foreclose the taxpayer's right of redemption. General Laws, c. 60, sec. 64 (App. p. 29). Proceedings under this petition to foreclose the right of redemption were still pending on July 14, 1944, when the Agawam Race Track was adjudicated a bankrupt. On that date, namely, July 14, 1944, and before counsel for the Town could even move for a final decree in the foreclosure proceedings, the Town and the Land Court were notified by the Referee in Bankruptcy that the Racing Association had been adjudicated a bankrupt.

On July 19, 1944, when there had still been no entry of a final decree, counsel for the Receiver of the Racing Association filed a formal notice of adjudication and a petition to stay proceedings. Motion to stay proceedings was fully argued on July 21st. Final decree was entered by the Land Court subsequent to the full and formal argument on the petition to stay proceedings.

Errors Specified.

The petitioner has submitted his specifications of the errors committed by the Circuit Court of Appeals in the form of six questions, contained on pages 6 to 7 of his petition. These are not all treated herein under separate headings, because certain of the principles involved are intermingled. However, in our argument and discussion of authorities we believe we discuss all of the questions raised by the petition.

Authorities and Argument.

GARDNER V. STATE OF NEW JERSEY, DECIDED ON JANUARY 20, 1947, WARRANTS THE GRANTING OF THE WITHIN PETITION FOR A WRIT OF CERTIORARI.

Two weeks after judgment was entered by the Circuit Court of Appeals in the case at bar, this Court delivered its unanimous opinion in the case of *Gardner* v. *State of New Jersey,* now reported in 91 Law. Ed. 410. The contention made therein by the State of New Jersey and that made here by the Town of Agawam are very similar, namely, that the lien asserted for unpaid taxes is not subject to the paramount jurisdictional supervision of the Federal Court of Bankruptcy.

This fundamental mistake in respect to the jurisdiction of the Federal Court is due to a failure "to recognize historic bankruptcy powers" which Mr. Justice Douglas pointed out at page 418 "are part of the arsenal of authority granted the Reorganization Court under Sec. 77."

The Court reviewed and discussed many of the cases cited by the Circuit Court of Appeals in the instant case and ruled not only that the bankrupt's equity is *in custodia legis,* but that the entire property itself as well as liens

should be supervised and administered in the Bankruptcy Court. It appears to us that the Court reached that conclusion, not only on fundamental concepts of equitable principles and just distribution of assets, but on the recognized authorities and practice of previously decided cases.

The order of the Referee directing the sale of the property free of liens, but for a sum not less than the full tax claimed, with the requirement that the lien be transferred to the proceeds of sale, and the affirmance thereof by the District Court was in accordance with long-established and accepted practice in this District, and approved by the Court in the notable case of *Van Huffel* v. *Harkelrode,* 284 U.S. 225.

If the ruling of the Circuit Court of Appeals in the instant case stands, the result is a definite undermining and weakening of the position the Federal Courts must take when they collide with State tribunals. It will also uproot the uniformly established practice and create uncertainty and chaos in the administration of bankruptcy affairs, particularly where liens of municipalities are involved.

The Paramount Jurisdiction of Federal Courts Sitting in Bankruptcy.

1. Jurisdiction Vested in the Bankruptcy Court upon Adjudication.

What passed into the protective custody and jurisdiction of the Bankruptcy Court by the filing of a voluntary petition in bankruptcy and adjudication on July 14, 1944? We submit any possible misunderstanding of this problem was set at rest by the Court in the case of *Gross* v. *Irving Trust Co.,* 289 U.S. 342, decided in 1933. There the distinction between matters wherein the jurisdiction of the Bankruptcy Court is paramount, as distinguished from those in

which jurisdiction is concurrent with some other tribunal, is clearly denoted. It is fundamental that the Bankruptcy Court's jurisdiction is paramount where creditors must be protected, thus preventing the working of a forfeiture and the securing of an unfair advantage (by the Town of Agawam) to the detriment of unsecured interests. At page 344 the Court said:

> "Upon adjudication of bankruptcy, title to all the property of the bankrupt, wherever situated, vests in the trustee as of the date of filing the petition in bankruptcy. The bankruptcy court has exclusive jurisdiction, and that court's possession and control of the estate cannot be affected by proceedings *in other courts,* state or federal. . . . Such jurisdiction having attached, control of the administration of the estate cannot be surrendered even by the court itself. . . . 'The filing of the petition is a caveat to all the world and in fact an attachment and an injunction.' " (Italics ours.)

The Circuit Court of Appeals in the instant case conceded (R. pp. 93-94):

> "That the Racing Association's right of redemption is a transferable interest in land which vested in the trustee in bankruptcy upon the filing of the petition . . ."

The Court then, by an improper interpretation of the Massachusetts law relating to the method and means whereby the taxpayer's right of redemption is terminated and destroyed, concluded that this interest came within the exclusive jurisdiction of the Land Court by virtue of the mere filing of the petition to foreclose the right of redemption (R. p. 94); that thereby the State Court acquired con-

structive possession and jurisdiction of the property prior to bankruptcy, even though it was conceded on all sides that the bankrupt at all times remained in actual physical possession of the real estate.

The question before the Circuit Court of Appeals was not the interpretation of substantive Massachusetts law relating to Land Court procedure, but, we submit, solely one of jurisdiction.

Under the superior jurisdiction of the Bankruptcy Court, the Town of Agawam must be treated fairly; but it must secure no unfair advantage at the expense of unsecured creditors. No forfeiture can be permitted. The proceedings to sell the property free of liens with the provision that they shall attach to the proceeds of the sale, at a price in no event less than the tax claim, as ordered by the Referee, was proof of the equitable treatment to which the Town was entitled and would receive from the Referee in Bankruptcy. This is the procedure approved by *Van Huffel* v. *Harkelrode,* 284 U.S. 225.

The case of *Isaacs* v. *Hobbs Tie & Timber Co.,* 282 U.S. 734, 737-738 (cited by the Court in *Gardner* v. *New Jersey,* at page 416, and in the *Gross* case in 289 U.S. 342), involved a challenge of jurisdiction by a trustee in bankruptcy of proceedings brought in a State Court to foreclose a mortgage on property owned by the bankrupt. This Court reiterated that title to, and constructive possession of, assets belonging to a bankrupt passed into the control of the Bankruptcy Court upon adjudication. The Court points out at page 737 that in such circumstances the Bankruptcy Court has exclusive jurisdiction to deal with the property of the bankrupt estate and may order a sale of real estate, even that lying outside the district; that once jurisdiction attaches, the Court's possession cannot be affected by actions brought in other Courts. Then, at the top of page

738, the Court makes a decisive statement (repeated and emphasized by Mr. Justice Douglas in *Gardner* v. *New Jersey,* at page 416), which sustains and warrants the procedure adopted by the Referee and Judge below to sell the property free of liens. The Court states:

> "Thus, while valid liens existing at the time of the commencement of a bankruptcy proceeding are preserved, it is solely within the power of a court of bankruptcy to ascertain their validity and amount and to decree the method of their liquidation.[1]"

The Referee in Bankruptcy was right in enjoining the Town and its officials from proceeding in the Land Court, for that is the very means provided for placing under the protective jurisdiction of the Bankruptcy Court property and assets for equitable liquidation and administration, even extending to questions respecting adjudication of title. This doctrine was recognized in *Ex Parte Baldwin,* 291 U.S. 610, where Judge Brandeis, speaking for the Court, said at page 615:

> "All property in the possession of a bankrupt of which he claims the ownership passes, upon the filing of a petition in bankruptcy, into the custody of the court of bankruptcy. To protect its jurisdiction from interference, that court may issue an injunction."

To the same effect are—

Gardner v. *New Jersey* (U.S. S.C. Jan. 20, 1947), 91 Law. Ed. 410.
Steelman v. *All Continent Corp.,* 301 U.S. 278.
Isaacs v. *Hobbs Tie & Timber Co.,* 282 U.S. 734.
Straton v. *New,* 283 U.S. 318.
In re Argyle-Lake Shore Corp., 78 F. (2d) 491.

The Massachusetts Supreme Judicial Court adopted the doctrine of *Gross* v. *Irving Trust Co.* and *Isaacs* v. *Hobbs Tie & Timber Co.* in the very recent case of *Robinson* v. *Trustees of N.Y., N.H. & H. R.R.*, 318 Mass. 121 (1945). There the Court said at page 125:

> "Substantive rights created by an act of Congress cannot be destroyed by some procedural step in accordance with the practice adopted in a State court"—

and further stated at page 131:

> "Doubtless, the court in which the reorganization proceedings were pending had acquired exclusive jurisdiction over the debtor and its property and could prevent interference with the court's possession of the property by enjoining competing or conflicting proceedings in other courts."

2. Treatment and Disposition of Liens in Bankruptcy.

We can only urgently suggest that the traditional doctrine and principle in bankruptcy recognized in *Gardner* v. *New Jersey* is decisive of our position, namely:

> "While valid liens existing at the commencement of bankruptcy proceedings have always been preserved, it has long been a function of the bankruptcy court to ascertain their validity and extent and to determine the method of their liquidation . . ."

The Court then unqualifiedly points out, at page 416: "the authority of the [bankruptcy] court to deal with the lien of a State has long been recognized," and at page 417 that—

> "If the reorganization court lacked the power to deal with tax liens of a State, the assertion by a State

> of a lien would pull out chunks of an estate from the reorganization court and transfer a part of the struggle over the corpus into tax bureaus and other state tribunals."

Cases dealing with reorganization proceedings under Section 77A or Section 77B, wherein this principle is involved, are, of course, applicable to proceedings in straight bankruptcy. Mr. Justice Douglas in the *Gardner* case cites many authorities in support of this conclusion. The Court further pointed out in *Meyer* v. *Fleming,* decided on February 4, 1946, and reported in 90 Law. Ed. 423, that the exclusive jurisdiction granted the Reorganization Court under Section 77A is that which Bankruptcy Courts have customarily possessed, and at page 424 that—

> ". . . the title and powers of the trustee are similar to those possessed by trustees in ordinary bankruptcy proceedings and he acquires title to all assets of whatsoever kind or nature."

Under Section 67 a (1) of the Bankruptcy Act (App. p. 25) we believe that only those liens acquired by creditors by means of an attachment, a levy or a judgment or decree are saved from subsequent proceedings in bankruptcy, but, nevertheless, in spite of this statutory provision the Bankruptcy Court is empowered to ascertain their validity and supervise their liquidation.

Throughout the proceedings herein, the Town of Agawam has strongly relied on the cases of *Straton* v. *New,* 283 U.S. 318, and *Pickens* v. *Roy,* 187 U.S. 177. The Court below placed reliance on *Straton* v. *New* in reaching its admittedly unjust conclusion (R. pp. 92-93). We believe these cases are readily distinguishable. In each, creditors with good attachments had obtained judgments long prior

to bankruptcy, and State Commissioners had been appointed to sell the properties in settlement of the outstanding judgments. The *Straton* and *Pickens* cases merely hold that bankruptcy cannot affect a good judgment obtained more than four months prior to adjudication, and will not interfere with a State Court which has instituted proceedings to realize on that judgment. It must be assumed that any surplus received, as a result of such State Court sale, would be turned over to the judgment debtor, or to his trustee in bankruptcy. There is nothing, express or implied, in these cases which would justify the forfeiture of any such surplus.

Straton v. *New never* challenged the right of the Bankruptcy Court, as stated at page 321, to—

> "inquire into the validity of liens, marshal them, and control their enforcement and liquidation"—

and the Court in *Gardner* v. *New Jersey* cited it, at page 416, as upholding this principle.

In the latter case Mr. Justice Douglas details in four comprehensive paragraphs (pp. 418-419) a variety of reasons why, upon the intervention of bankruptcy, the Federal Courts possess paramount jurisdiction to deal with private and municipal liens and determine the destiny of bankruptcy estates.

Conflict of Decisions.

We submit the decision of the First Circuit Court of Appeals in the instant case is in conflict with *In re Argyle-Lake Shore Corp.*, 78 F. (2d) 491, decided by the Seventh Circuit in 1935. In the latter case the Court insisted (p. 494) the right of redemption was an asset of the bankruptcy estate which it would protect by injunction to the

end that "equity might be done to all interested parties." The Circuit Court in the case at bar ruled that this right of redemption was *at all times* under the exclusive jurisdiction of the Land Court (R. p. 94). This was an obvious mistake.

We venture to suggest that the learned opinion of Judge Brewster, a Massachusetts lawyer of wide experience, sitting in the District Court in the case of *In re Hotel Charles Co.*, 12 F. Supp. 734 (affirmed in 84 F. (2d) 589), indicated the true nature of this right of redemption and its appropriate treatment in bankruptcy when he said at page 736:

> "Whether we approach the matter from the viewpoint of the debtor, as an owner of a right to redeem, or from the viewpoint of the city as a creditor with a lien upon the real estate, we reach the same ultimate result. In order to determine the extent and value of the right or the extent of the incumbrance, there must be inherent in the court authority to test the validity and quantity of the right of [redemption] or the lien."

The Bankrupt's Right to a Stay in the Land Court.

Section 11 e (11 U.S.C. Sec. 29 e), 1940, of the Bankruptcy Act (App. p. 24), entitled the bankruptcy estate to a respite of not less than sixty days. In defiance of this, after informal notice from the Referee in Bankruptcy on July 14, 1944, and the filing of a formal notice of adjudication and request for a stay of proceedings on July 19, 1944, and after formal argument by representatives of the Bankruptcy Court, the Land Court entered its decree on July 21, 1944. The Land Court erred in ignoring the mandate of Section 11 e and the request of the representatives of the Bankruptcy Court.

When the notice of adjudication and petition to stay were formally of record in the Land Court on July 19, 1944, then the principle recognized by the Massachusetts Supreme Judicial Court in such cases should have been applied as in *Allard* v. *Estes,* 292 Mass. 187, where the Court said at page 193:

> "When application is properly made for a stay of proceedings in the State court, it is the duty of that court to act in the enforcement of the provisions of the bankruptcy act. . . . 'Upon the application of the bankrupt to the court, State or national, in which the suit is pending, it is the duty of that court to stay the proceedings. . . .'"

The Effect of Pending Proceedings under Section 77B.

We agree with Mr. Justice Sweeney of the District Court that in this case the Federal Court has paramount jurisdiction. We believe that is the one vital issue in this case and that the District Court decided it right, but since the question of a prior proceeding under Section 77B has been raised, a brief comment is appropriate.

This bankrupt filed a petition for reorganization under Section 77B of the Bankruptcy Act on December 23, 1935, long before the Town ever moved to collect its tax. A plan of reorganization was confirmed on December 27, 1937, but no final decree was ever entered. The failure to enter a final decree leaves the reorganization proceedings still pending and leaves the property of the bankrupt under the jurisdiction of the Federal Court. See *Meyer* v. *Kenmore Granville Hotel Co.,* 297 U.S. 160, and particularly the opinion of Chief Justice Stone at page 166, as follows:

> "'upon the termination of the proceedings a final decree shall be entered,' which 'shall discharge the

debtor from its debts and liabilities.' Discharge is effected not by confirmation of the plan but by the final decree.

"Confirmation of a plan of reorganization is but a step in the administration of the debtor's estate . . ."

We have felt throughout that the case should be decided on the broad ground of paramount jurisdiction, as Mr. Justice Sweeney decided it.

We certainly feel that the interests of the bar and the public will best be served by a final decision of the jurisdictional question, but if this Court should disagree with Mr. Justice Sweeney on the question of jurisdiction, we must, for the protection of this bankrupt's creditors, insist that the jurisdiction of the Federal Court acquired by reorganization proceedings has never been terminated and has at all times excluded any possible jurisdiction by the Massachusetts Land Court.

Conclusion.

This is a proceeding in equity. The bankrupt, when adjudicated, had the right to redeem its property from the foreclosure proceedings then pending in the State Land Court.

The right of redemption was of great value and upon adjudication passed into the custody of the Bankruptcy Court.

Until the right of redemption is foreclosed, the Town in effect is only a lienor and as such should not be allowed to collect by way of forfeiture in excess of its tax claim. The Referee in Bankruptcy and the Judge of the District Court have fully and adequately protected this Town.

No valid reason appears why a Federal Court should surrender its jurisdiction to the State tribunal and thus work a forfeiture and forever bar and exclude unsecured claimants.

We respectfully urge, therefore, that the writ of certiorari ought to issue.

CHARLES F. CONNORS, TRUSTEE IN BANKRUPTCY OF AGAWAM RACING AND BREEDERS' ASSOCIATION, INC.,
By his Attorneys,
DAVID J. COHEN,
EDWARD J. FLAVIN.

Appendix.

Statutes.

UNITED STATES CONSTITUTION.

ARTICLE I, SECTION 8. "The Congress shall have Power . . . To establish a uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States."

FEDERAL BANKRUPTCY ACT.

Section 11 e (11 U.S.C. Sec. 29 e). "A receiver or trustee may, within two years subsequent to the date of adjudication or within such further period of time as the Federal or State law may permit, institute proceedings in behalf of the estate upon any claim against which the period of limitation fixed by Federal or State law had not expired at the time of the filing of the petition in bankruptcy. Where, by any agreement, a period of limitation is fixed for instituting a suit or proceeding upon any claim, or for presenting or filing any claim, proof of claim, proof of loss, demand, notice, or the like, or where in any proceeding, judicial or otherwise, a period of limitation is fixed, either in such proceeding or by applicable Federal or State law, for taking any action, filing any claim or pleading, or doing any act, and where in any such case such period had not expired at the date of the filing of the petition in bankruptcy, the receiver or trustee of the bankrupt may, for the benefit of the estate, take any such action or do any such act, required of or permitted to the bankrupt, within a period of sixty days subsequent to the date of adjudication or within such further period as may be permitted by the agreement, or in the proceeding or by applicable Federal or State law, as the case may be."

Section 67 a (1) (11 U.S.C. Chap. 7, Sec. 107 a (1)). "Every lien against the property of a person obtained by attachment, judgment, levy, or other legal or equitable process or proceedings within four months before the filing of a petition in bankruptcy or of an original petition under chapter X, XI, XII, or XIII of this Act by or against such person shall be deemed null and void (a) if at the time when such lien was obtained such person was insolvent or (b) if such lien was sought and permitted in fraud of the provisions of the Act. *Provided, however,* That if such person is not finally adjudged a bankrupt in any proceeding under this Act and if no arrangement or plan is proposed and confirmed, such lien shall be deemed reinstated with the same effect as if it had not been nullified and voided."

Corporate Reorganization.

The sections hereinafter referred to and quoted are those in effect when the reorganization petition was filed in 1935 and when the order of confirmation was entered on December 27, 1937.

Section 77B (h), referring to the confirmation of a plan, stated that, where property remained in possession of a debtor, it—

> ". . . shall be free and clear of all claims of the debtor, its stockholders and creditors . . ."

The provisions of the Act respecting the entry of a final decree and its effect provided in Section 77B (h) that—

> "Upon the termination of the proceedings a final decree shall be entered discharging the trustee or trustees, if any, making such provisions as may be equitable, by way of injunction or otherwise, and closing

the case. Such final decree shall discharge the debtor from its debts and liabilities, and shall terminate and end all rights and interests of its stockholders, except as provided in the plan or as may be reserved as aforesaid."

Section 77B (o):

"In proceedings under this section and consistent with the provisions thereof, the jurisdiction and powers of the court, the duties of the debtor and the rights and liabilities of creditors, and of all persons with respect to the debtor and its property, shall be the same as if a voluntary petition for adjudication had been filed and a decree of adjudication had been entered on the day when the debtor's petition or answer was approved."

Massachusetts General Laws (Ter. Ed.) Chapter 60.

"Section 37. Taxes assessed upon land, including those assessed under sections twelve, thirteen and fourteen of chapter fifty-nine, shall with all incidental charges and fees be a lien thereon from January first in the year of assessment. Except as provided in section sixty-one, such lien shall terminate at the expiration of two years from October first in said year, if the estate has in the meantime been alienated and the instrument alienating the same has been recorded, otherwise it shall continue until a recorded alienation thereof; but if while such lien is in force a tax sale or taking has been made, and the deed or instrument of taking has been duly recorded within sixty days, but the sale or taking is invalid by reason of any error or irregularity in the proceedings subsequent to the assessment, the lien and also the lien or liens for any subsequent taxes or

charges which have been added to the tax title account under authority of section sixty-one shall continue for ninety days after a surrender and discharge under section forty-six or a release, notice or disclaimer under sections eighty-two to eighty-four, inclusive, has been duly recorded, or for ninety days after the sale or taking has been finally adjudged invalid by a court of competent jurisdiction, and if while a lien established by this section is in force the owner of the real estate on which it attaches is adjudicated bankrupt, the lien shall continue for six months after final termination of the bankruptcy proceedings, subject, however, to any lawful action under any paramount authority conferred by the bankruptcy laws of the United States. Said taxes, if unpaid for fourteen days after demand therefor, may, with said charges and fees, be levied by sale of the real estate, if the lien or liens thereon have not terminated. No tax title and no item included in a tax title account shall be held to be invalid by reason of any error or irregularity which is neither substantial nor misleading, whether such error or irregularity occurs in the proceedings of the collector or the assessors or in the proceedings of any other official or officials charged with duties in connection with the establishment of such tax title or the inclusion of such item in the tax title account." (As amended by St. 1936, c. 146, and St. 1941, c. 84, sec. 1.)

. . . . . .

"SECTION 45. The collector shall execute and deliver to the purchaser a deed of the land, stating the cause of sale, the price for which the land was sold, the name of the person on whom the demand for the tax was made, the places where the notices were posted, the name of the newspaper in which the advertisement of the sale was published, and the residence of the grantee, and shall contain a warranty that the sale has in all particulars been conducted accord-

ing to law. The deed shall convey the land to the purchaser, subject to the right of redemption. The title thus conveyed shall, until redemption or until the right of redemption is foreclosed as hereinafter provided, be held as security for the repayment of the purchase price, with all intervening costs, terms imposed for redemption and charges, with interest thereon, and the premises conveyed, both before and after either redemption or foreclosure, shall also be subject to and have the benefit of all easements and restrictions lawfully existing in, upon or over said land or appurtenant thereto, and, except as provided in section seventy-seven, all covenants and agreements running with said premises either at law or in equity, when so conveyed. Such deed shall not be valid unless recorded within sixty days after the sale. If so recorded it shall be prima facie evidence of all facts essential to the validity of the title thereby conveyed, whether the deed was executed on or before as well as since July first, nineteen hundred and fifteen. No sale hereafter made shall give to the purchaser any right to possession of the land until the expiration of two years after the date of the sale." (As amended by St. 1938, c. 339, sec. 1.)

. . . . . .

"SECTION 53. If a tax on land is not paid within fourteen days after demand therefor and remains unpaid at the date of taking, the collector may take such land for the town, first giving fourteen days' notice of his intention to exercise such power of taking, which notice may be served in the manner required by law for the service of subpoenas on witnesses in civil cases or may be published, and shall conform to the requirements of section forty. He shall also, fourteen days before the taking, post a notice so conforming in two or more convenient and public places." (As amended by St. 1933, c. 164, sec. 3.)

"SECTION 54. The instrument of taking shall be under the hand and seal of the collector and shall contain a statement of the cause of taking, a substantially accurate description of each parcel of land taken, the name of the person to whom the same was assessed, the amount of the tax thereon, and the incidental expenses and costs to the date of taking. Such an instrument of taking shall not be valid unless recorded within sixty days of the date of taking. If so recorded it shall be prima facie evidence of all facts essential to the validity of the title so taken, whether the taking was made on or before as well as since July first, nineteen hundred and fifteen. Title to the land so taken shall thereupon vest in the town, subject to the right of redemption. Such title shall, until redemption or until the right of redemption is foreclosed as hereinafter provided, be held as security for the repayment of said taxes with all intervening costs, terms imposed for redemption and charges, with interest thereon, and the premises so taken, both before and after either redemption or foreclosure, shall also be subject to and have the benefit of all easements and restrictions lawfully existing in, upon or over said land or appurtenant thereto, and, except as provided in section seventy-seven, all covenants and agreements running with said premises either at law or in equity, when so taken." (As amended by St. 1938, c. 339, sec. 2.)

. . . . . .

"SECTION 64. The title conveyed by a tax collector's deed or by a taking of land for taxes shall be absolute after foreclosure of the right of redemption by decree of the land court as provided in this chapter. The land court shall have exclusive jurisdiction of the foreclosure of all rights of redemption from titles conveyed by a tax collector's deed or a taking of land for taxes, in a proceeding provided for in sections sixty-five to seventy-five, inclusive.

"SECTION 65. After two years from a sale or taking of land for taxes, except as provided in section sixty-two, whoever then holds the title thereby acquired may bring a petition in the land court for the foreclosure of all rights of redemption thereunder. Such petition shall be made in the form to be prescribed by said court and shall set forth a description of the land to which it applies, with its assessed valuation, the petitioner's source of title, giving a reference to the place, book and page of record, and such other facts as may be necessary for the information of the court. Two or more parcels of land may be included in any petition brought by a town, whether under a taking or as purchaser of such title or titles, if such parcels are in the same record ownership at the time of bringing such petition." (As amended by St. 1938, c. 305.)

. . . . . .

"SECTION 68. Any person claiming an interest, on or before the return day or within such further time as may on motion be allowed by the court, shall, if he desires to redeem, file an answer setting forth his right in the land, and an offer to redeem upon such terms as may be fixed by the court. Thereupon the court shall hear the parties, and may in any case in its discretion make a finding allowing the party to redeem, within a time fixed by the court, upon payment to the petitioner of an amount sufficient to cover the original sum, costs, interest at the rate of six and one half per cent per annum, and all subsequent taxes, costs and interest to which the petitioner may be entitled under section sixty-one or sixty-two, together with the costs of the proceeding and such counsel fee as the court deems reasonable. The court may impose such other terms as justice and the circumstances warrant.

"If the land has been divided by sale, mortgage, upon a petition for partition or otherwise and such division has

been duly recorded in the registry of deeds, the court may permit redemption of any of the portions into which the land has been divided, upon such terms as it may deem just and equitable toward all parties and may make a decree under section sixty-nine barring redemption of the remaining portions." (As amended by St. 1935, c. 414, sec. 3.)

"SECTION 69. If a default is entered under section sixty-seven, or if redemption is not made within the time and upon the terms fixed by the court under the preceding section, or if at the time fixed for the hearing the person claiming the right to redeem does not appear to urge his claim, or if upon hearing the court determines that the facts shown do not entitle him to redeem, a decree shall be entered which shall forever bar all rights of redemption." (As amended by St. 1935, c. 224, sec. 4.)

CHAPTER 185.

"SECTION 1. The land court shall be a court of record. It shall have exclusive original jurisdiction of the following matters:

. . . . . .

"(*b*) Proceedings for foreclosure of and for redemption from tax titles under chapter sixty." (As amended by St. 1935, c. 318, sec. 3.)

INDEX

CITATIONS

Cases

In the Supreme Court of the United States

OCTOBER TERM, 1946

No. 1050

CHARLES F. CONNORS, TRUSTEE IN BANKRUPTCY OF THE AGAWAM RACING AND BREEDERS' ASSOCIATION, INC.,

Petitioner,

v.

TOWN OF AGAWAM,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the United States District Court for the District of Massachusetts is reported in 65 F. Supp. 755. The opinion of the United States Circuit Court of

Appeals for the First Circuit, filed January 7, 1947, is not as yet reported but appears on pages 88 to 97 of the Record.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on January 7, 1947. (R. p. 98.) The petition for a writ of certiorari was filed on February 24, 1947. Petitioner invokes the jurisdiction of this Court under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

The petitioner presented questions as set forth on pages 6 and 7 of its petition.

Not for the purpose of alleging any errors in the decisions of the Circuit Court of Appeals, but to clarify the real issues in the case, the respondent says that the issues are:—

1. Where petitions to foreclose tax liens on real estate have been brought in the Land Court of the Commonwealth of Massachusetts, a court of record and competent jurisdiction, against the equity owner of such real estate two and one-half years before the owner's adjudication in bankruptcy, and at the beginning of said Land Court proceedings notice of the filing of such Land Court proceedings was properly recorded in the Registry of Deeds according to state law and said owner was duly served, appeared, answered, and actively took part in the Land Court proceedings and hearings—is the Land Court deprived of jurisdiction to enter final decrees foreclosing the

tax liens when the owner is adjudicated a bankrupt two hours and ten minutes before the Land Court hearing at which motions to obtain final foreclosure decrees were allowed by that Court? Or can the Bankruptcy Court "snatch a res" from the Land Court's mouth by a mere adjudication in bankruptcy of a real estate owner who for more than two years unsuccessfully fought its case in the state court?

2. Where a debtor filed a petition for reorganization under Section 77B of the Bankruptcy Act on December 23, 1935, an order confirming the debtor's plan of reorganization was entered on December 27, 1937, said reorganization plan was fully consummated before July 1, 1938 (R. pp. 91 and 92), although no final decree was ever entered in the reorganization proceedings, does the reorganization court retain jurisdiction over the debtor's property sufficient to prevent a state court six years after the consummation of the plan from foreclosing a real estate tax lien acquired for taxes that accrued after the approval of and the consummation of the plan of reorganization?

3. A third issue arises from the respondent's motion to dissolve a restraining order issued by the Referee in Bankruptcy forbidding the Town to sell or transfer the real estate involved. Its outcome is dependent upon the issues of jurisdiction. As the owner of the lands by decrees of the Land Court, the Town asks that the restraining order be removed.

CONSTITUTION AND STATUTES INVOLVED

The applicable provisions of the Constitution and the federal acts and Statutes of the Commonwealth of Massachusetts are:

Article I, Section 8 of The Constitution; Sections 2(a) (15), 11e and 67a of the Bankruptcy Act, subsections a and h of old Section 77B of the corporate reorganization Act of June 7, 1934; Massachusetts General Laws (Ter. Ed.) Chapter 60, sections 37, 53, 54, 64, 65, 66, 68, and 69; Chapter 185, section 1(b), and Chapter 231, section 135. They are set forth in Appendix.

STATEMENT

The Agawam Racing and Breeders' Association, Inc. prior to 1935 owned and operated a race track in the Town of Agawam, Massachusetts, on a tract of land that was formerly known as the Bowles-Agawam Airport and which is described in three parcels on an exhibit (R. p. 3). On December 27, 1935, (R. p. 91) it filed a petition for corporate reorganization and the petition was approved and the debtor continued in possession. A plan of reorganization was approved on December 27, 1937. A trust indenture and a mortgage trust deed were executed in conformity with the plan and the court entered an order on the approval of their form. (R. pp. 87 and 92.) These particular trust indenture and mortgage trust deeds and orders thereon were omitted from the Record sent up with this case with the petition for certiorari—very likely because of their extreme length, each about fifty pages. But the Circuit Court of Appeals found from an examination of this evidence that the approved plan of reorganization had been consummated before July 1,

1938. (R. p. 92.) Despite this no final decree has ever been entered in that proceeding.

The Town admits that taxes due before 1937 have been paid. But though the Agawam Racing and Breeders' Association, Inc. owned and operated the race track in 1938, the taxes for the year 1938 were not paid nor has any payment of taxes been made on any taxes assessed for subsequent years (R. p. 15).

Because of the failure of the Agawam Racing and Breeders' Association, Inc. to pay the 1938 taxes, the Town of Agawam, under the provisions of Massachusetts General Laws (Ter. Ed.) c. 60, sections 53 and 54, acquired title to these lands by three instruments of taking dated August 23, 1939, which were duly recorded in the Hampden County Registry of Deeds on August 29, 1939,—approximately five years before the adjudication in bankruptcy. (R. pp. 50 and 51.)

By virtue of General Laws (Ter. Ed.) c. 60, s. 54, "title to the land so taken shall thereupon vest in the town, subject to the right of redemption."

The state law, General Laws (Ter. Ed.) c. 60, s. 65, requires that two years must elapse from the date of the taking before the holder of such a title may petition the Land Court of the Commonwealth to foreclose all rights of redemption.

The Land Court has exclusive jurisdiction of the foreclosure of all rights of redemption from tax taking. General Laws (Ter. Ed.) c. 60, s. 64; c. 185, s. 1.

The Town of Agawam duly awaited the lapse of two years and on November 26, 1941, filed its petitions to foreclose the rights of redemption under the tax taking titles it held. (R. pp. 51 and 52.) And in like conformity with the state law, notices were recorded in the Hampden County Registry of Deeds that peti-

tions to foreclose the tax liens were filed in the Land Court. (R. p. 51.)

These tax takings in addition to vesting title in the Town are also held under the provisions of General Laws (Ter. Ed.) c. 60, ss. 60 and 61, as security for the repayment of taxes with all intervening costs, charges, and interest, and subsequent taxes assessed thereon until redemption or until foreclosure of the rights of redemption in the Land Court as provided in Chapter 60.

After the petitions to foreclose were filed in the Land Court, the title was referred to a Land Court examiner and upon the receipt of his report, the Land Court issued a citation to all parties, returnable January 12, 1942, all in conformity with General Laws (Ter. Ed.) c. 60, s. 65. The Agawam Racing and Breeders' Association, Inc. appeared and answered to that petition on January 9, 1942. (R. p. 52.) In its answer, the Agawam Racing and Breeders' Association, Inc. did not deny the validity of the Town of Agawam's title but simply prayed for further time to redeem (Exhibit, R. p. 81).

Thereafter there were a series of hearings before the Land Court on May 28, 1942, November 14, 1942, March 3, 1943, June 29, 1943, January 6, 1944, June 14, 1944, and July 14, 1944. (R. pp. 52, 53, 54.) The Land Court gave the Agawam Racing and Breeders' Association, Inc. opportunity to redeem by continuing the cases from time to time for that purpose over a period of two years. On January 6, 1944, the Land Court extended the time to redeem to April 20, 1944, and on April 18, 1944, again extended the time to redeem to June 19, 1944. On the latter date the Town of Agawam, because of the bankrupt's failure to redeem, filed its motions for final decrees to foreclose.

These motions were continued for hearing until July 14, 1944, at twelve noon. (R. p. 53.)

It is to be particularly noted that the hearings on the motions for final decrees foreclosing the rights of redemption were assigned for twelve o'clock noon on July 14, 1944, (R. p. 53) and the hearing assignment was made on June 19, 1944.

In these circumstances, the evidence discloses that at 9:50 A.M. on the morning of July 19, 1944,—two hours and ten minutes before the assigned hearing in the Land Court—the bankrupt filed its voluntary petition to be adjudicated a bankrupt in the United States District Court, obtained an immediate adjudication, and an immediate referral of the case to Arthur Black, Referee in Bankruptcy. (R. p. 55.) Then counsel for the Agawam Racing and Breeders' Association, Inc. in the Land Court, who was afterward appointed counsel for the Receiver, secured a letter from the Referee addressed to the Town of Agawam's counsel and a copy of the same letter directed to Judge Fenton of the Land Court, in which a request was made to the Land Court to hold up proceedings in that court because of the bankruptcy. (R. p. 16.) Counsel for the bankrupt went to the Land Court and testified that he notified Judge Fenton of the bankrupt's adjudication and delivered a copy of the Referee's letter to him. (R. p. 55.) (The record of the Land Court shows that notice of the adjudication in bankruptcy was not filed in that court until July 19, 1944. [R. p. 53.])

Judge Fenton proceeded to a hearing and after the hearing allowed on that day—July 14, 1944—the Town of Agawam's motions for final decrees, as appears by the record of that court.

Thereafter the Referee in Bankruptcy appointed

Daniel W. Gurnett, receiver, and upon his application issued, on July 19, 1944, a temporary restraining order designed to restrain the Town of Agawam and its officials "from proceeding, dealing with or in any way impairing the right to redeem presently in the bankrupt estate" and "from conveying, transferring or in any way dealing with or encumbering any property" of the bankrupt.

At the time this restraining order was issued, the motions to foreclose the rights of redemption had been allowed by the Land Court, which the bankrupt and the Receiver knew or should have known, and all that remained was the mechanics necessary for the drawing up of the final decrees and their entries on the official records of the Land Court. And in effect the application by the Receiver for the restraining order and its issuance by the Referee in Bankruptcy was an indirect way of attempting to stay the proceedings of a state court—a power which the Referee in Bankruptcy does not have under the Bankruptcy Act (section 2 [a] 15).

On July 19, 1944, the Receiver appeared in the Land Court by counsel with a petition to stay the entry of the final decrees foreclosing the right of redemption in that court. The court assigned that petition for hearing on July 21 at 11 A.M. and, after hearing, the petition for stay of proceedings was denied on July 21 and the final decrees foreclosing the rights of redemption were formally entered on the same day. (R. p. 53.)

Thereafter the Receiver appealed from the Land Court decrees, but he failed to perfect his appeals in accordance with General Laws (Ter. Ed.) c. 231, s. 135, and consequently the appeals were ineffective and the Land Court final decrees stand.

But it is to be noted, in view of the reference in the

comment of the Circuit Court of Appeals that "the trustee was entitled to a stay of the Land Court proceedings for sixty days after adjudication in order to decide whether redemption was advisable and if so to act accordingly," that the trustee in bankruptcy did act by filing a petition in the Land Court to stay (R. p. 53); and that although this petition was denied, he appealed and kept the case open on appeal to October 13, 1944 (R. p. 54)—a period of three months after the bankruptcy adjudication. It was on and after October 13, 1944, that the trustee failed to perfect his appeal to the Supreme Judicial Court.

In the present proceedings, the Trustee in Bankruptcy seeks an order from the bankruptcy court to sell these same properties "free and clear" of liens (R. pp. 1 and 12). Without submitting to the jurisdiction of the bankruptcy court, (R. pp. 8 and 12) the Town of Agawam came in and answered by stating that the bankrupt estate does not own the properties and that by the final decrees in the Land Court, the full title, and not simply a lien, of these properties is in the Town of Agawam, and that the Trustee has no right to sell them. And in a separate petition the Town of Agawam prays that the restraining order of July 19, 1944, be vacated.

SUMMARY OF ARGUMENT

1. Where a town commences proceedings to foreclosure rights of redemption of a five year old valid real estate tax lien in the Land Court of Massachusetts, a state court of competent jurisdiction, more than two and a half years before the bankruptcy adjudication of the equity owner of such real estate, the federal court

as a court of bankruptcy is without jurisdiction to enjoin the state court foreclosure action.

2. In the circumstances stated in paragraph 1, it is the right and duty of the state court to proceed to final decree notwithstanding adjudication, the rule being applicable that the court which first obtains rightful jurisdiction over the subject matter shall not be interfered with—if the lien was acquired four months or more before bankruptcy.

3. *Gardner* v. *New Jersey*, U. S., 91 Law Ed. 410, 15 U. S. Law Week 4171, decided January 20, 1947, is not applicable to the case at bar for (1) no conflict of jurisdiction with a state court was involved in the *Gardner* case; and (2) the State of New Jersey submitted to the jurisdiction of the reorganization court in filing and prosecuting its tax claim, while the Town of Agawam did not submit to the jurisdiction of the bankruptcy court (R. pp. 8 and 12).

4. Cases cited by the petitioner are not applicable to the present case for they concern cases where the liens were acquired within four months of bankruptcy or where, after bankruptcy proceedings were commenced, actions to enforce the liens were brought in the state courts.

5. The Land Court of Massachusetts had constructive possession of the res and jurisdiction of the parties and the res in the tax lien foreclosure proceedings more than two years before the bankruptcy adjudication.

6. Reorganization proceedings of the bankrupt under Section 77B of the Bankruptcy Act had no effect on the Land Court jurisdiction in the tax lien foreclosure proceeding for the reorganization plan was approved

and consummated prior to the accrual of taxes involved in the present case and three years before proceedings were commenced in the Land Court to foreclose the tax lien.

7. If the bankrupt was entitled to redeem the property from the tax lien within sixty days after the bankruptcy adjudication under Section 11e of the Bankruptcy Act, it did not do so. In effect, it had ninety-one days after the Land Court decree to exercise any such right by virtue of appeal taken to the Supreme Judicial Court and subsequently abandoned; during the sixty day period the situation had not been changed because of an injunction issued by the Referee in Bankruptcy; and if the bankrupt was aggrieved by the decree of the Land Court denying its petition for stay of proceedings, the proper redress was by appeal to the Supreme Judicial Court. Since the bankrupt did not redeem within the sixty day period, the question has become moot. The final decree of the Land Court became res adjudicata in the case when the bankrupt abandoned its appeal.

8. There is no conflict of decisions of other Circuit Courts of Appeals with the decision of the Circuit Court of Appeals for the First Circuit rendered in this case. This Court has denied certiorari in similar cases. The law of this case has been plainly settled in the case of *Straton* v. *New*, 283 U. S. 318, at 331.

9. Respecting the petitioner's argument concerning "forfeiture" of its property, forfeiture is a necessary adjunct to the taxing power of governments—federal, state and local; and Massachusetts gives every right a taxpaper has under the Constitution of the United States to appear and be heard before its administrative

taxing boards and its courts, rights which were availed by the bankrupt.

10. The decision of the Circuit Court of Appeals for the First Circuit is so clearly correct that no further review would be warranted.

ARGUMENT

Where local tax lien foreclosure proceedings are commenced in a state court of competent jurisdiction more than two years and a half before the bankruptcy adjudication of the equity owner of the real estate involved, the federal court is without jurisdiction to enjoin the state court foreclosure action.

It is to be observed at the outset that:

a. The tax takings the Town of Agawam had which vested in it title to the lands involved were acquired four years and nine months prior to the bankrupt's adjudication (R. p. 50). Massachusetts General Laws (Ter. Ed.) c. 60, s. 54, set forth in Appendix.

b. More than two and a half years prior to the adjudication the Town of Agawam invoked the Land Court to foreclose the rights of redemption (R. pp. 51 and 52).

c. From January 9, 1942, (R. p. 52) the Land Court had jurisdiction over the Agawam Racing and Breeders' Association, Inc. (which filed its voluntary petition for bankruptcy on July 14, 1944), the Town of Agawam, and the real estate involved.

d. The original tax liens were recorded in the proper registry of deeds on August 29, 1939 (R. p. 51);

notices of the petition to foreclose the tax liens in the Land Court were duly recorded in the registry of deeds on November 25, 1941 (R. p. 51); the bankrupt appeared and answered in the Land Court proceedings on January 9, 1942; and the Land Court had complete jurisdiction of the res involved and of all the parties.

e. The acquisition of the tax titles by the Town were in conformity with the applicable state statutes (R. p. 15) and no question was raised by the bankrupt concerning their validity.

f. The tax title foreclosure proceedings were performed in strict accord with state statutory and Land Court requirements (R. p. 15).

g. At intervals from May 28, 1942, to July 14, 1944, the Land Court heard all the parties and entered orders for redemption of tax liens (R. pp. 52 and 53).

h. When it became apparent that the Land Court would at a hearing scheduled for noon on July 14, 1944, enter a decree foreclosing the rights of redemption, the bankrupt (two hours and ten minutes before the scheduled hearing) went into voluntary bankruptcy—in an effort to delay further the litigation which the Land Court had patiently considered over a period of two years.

i. The Land Court decrees entered July 21, 1944, gave the Town of Agawam absolute title to the real estate. Massachusetts General Laws (Ter. Ed.) c. 60, s. 64, set forth in Appendix—and those decrees not appealed from, still stand.

It is settled law that if a state court, four months or more before a petition for adjudication in bankruptcy is filed, is invoked by the holder of a tax lien to fore-

close rights of redemption under the state court's powers under applicable state statutes, and if the taxpayer or lienor appears and answers in the state court four months or more before the petition in bankruptcy is filed, the state court has complete jurisdiction over the bankrupt and the property involved and that jurisdiction is not divested by proceedings in bankruptcy.

Straton v. *New*, 283 U. S. 318.

Pickens v. *Roy*, 187 U. S. 177, 180.

Emil v. *Hanley*, 318 U. S. 515.

Muffler v. *Petticrew Real Estate Co.*, 132 F. (2d) 479 (6th Cir.). Certiorari denied June 7, 1943, 319 U. S. 766.

Drusilla Carr Land Corp., 107 F. (2d) 565, CCA (7th Cir.).

In Re Tinkoff, 141 F. (2d) 731, CCA (7th Cir.).

Dannel v. *Wilson-Weesner-Wilkinson Co.*, 109 F. (2d) 364 (6th Cir.).

In Re Greenlie-Halliday Co., 57 F. (2d) 173 (2d Cir.).

Bryan v. *Speakman*, 53 F. (2d) 463 (5th Cir.).

In Re Maier Brewing Co. Inc., 65 F (2d) 673 (9th Cir.).

Straton v. *New*, 283 U. S. 318, held:

(1) That liens acquired more than four months before bankruptcy proceedings are instituted, if valid under state law, are preserved and will be accorded priority in the distribution of the estate in accordance with local law; but it also declared

(2) That when under liens acquired prior to the four months' period, a state court has been invoked and has acquired jurisdiction of the res for the purpose of enforcing the lien, the bankruptcy court has no power to enjoin the continuation of such action.

It is on this latter point that the principal conflict comes between the petitioner and this respondent. The petitioner cites *Isaacs* v. *Hobbs Tie and Timber Company*, 282 U. S. 734, and *Gross* v. *Irving Trust Company*, 289 U. S. 342, and similar cases which speak of the Bankruptcy Court's paramount and exclusive jurisdiction to deal with property of the bankrupt. But in the *Isaacs* case, the suit in the state court to foreclose a mortgage on land was not begun four months before the bankruptcy; it was begun after the bankruptcy adjudication and, of course, the bankruptcy court having prior jurisdiction had "paramount jurisdiction" over the state court proceeding. And in the *Gross* case, as well as in the case of *Taylor* v. *Sternberg*, 293 U. S. 470, it was held that where receivership proceedings were brought in a state court within four months prior to bankruptcy, the bankruptcy court by virtue of the bankruptcy act ousts the state court of jurisdiction.

But not one case in the petitioner's brief holds that a bankruptcy court can oust a state court of jurisdiction where actual proceedings to enforce the lien were brought in the state court more than four months before bankruptcy.

In such circumstances this court has held in *Pickens* v. *Roy*, 187 U. S. 177, 180, that it is "the right and duty" of the (state) court "to proceed to final decree notwithstanding adjudication, the rule being applicable that the court which first obtains rightful jurisdiction over the subject matter shall not be interfered with."

Straton v. *New*, 283 U. S. 318, 326, states:

> " . . . the federal courts have with practical unanimity held that where a judgment which constituted a lien on the debtor's real estate is recovered more than four months prior to the filing of the petition, the bankruptcy court is without jurisdiction to enjoin the prosecution of the creditor's action, instituted prior to the filing of a petition in bankruptcy, to bring about a judicial sale of real estate."

And in the same *Straton* v. *New* case, the court in making its decision considered the same arguments that the petitioner herein makes in his brief—that by the mere adjudication in bankruptcy, the bankruptcy court acquires paramount jurisdiction over state courts. But the court in the *Straton* v. *New* case, at page 331, in forceful language said:

> "Most of the cases cited by the appellees to the effect that the initiation of bankruptcy proceedings confers on the district court jurisdiction to enjoin pending suits in state courts deal with a situation where the lien was acquired within four months of the filing of the petition, or where, after the filing of the petition an action was begun to enforce a lien valid in bankruptcy. As heretofore noted, there are a few cases which have held that the bankruptcy court may enjoin proceedings, brought prior to the filing of the petition, to enforce valid liens which are more than four months old at the date of bankruptcy; but these cases are contrary to the decisions of this Court and to the great weight of judicial authority."

This Court and the federal courts strongly maintain the doctrine enunciated in the *Straton* v. *New* case to preserve comity between the state and federal courts and prevent conflicts and confusion that would arise if the doctrine were otherwise. The extent to which this Court has gone to maintain this doctrine can be appreciated by considering the opinion in *Emil, Trustee in Bankruptcy*, v. *Hanley*, 318 U. S. 515. That case concerned the interpretation of section 2(a) (21) of the Chandler Act of 1938 that requires receivers and trustees appointed by courts other than bankruptcy courts, within four months of bankruptcy, to deliver over assets to the bankruptcy receiver or trustee and account to the bankruptcy court. In that case a receiver in a mortgage foreclosure proceeding was appointed by a state court within the four month period to collect rents. And the United States Supreme Court held, after frequently citing the law in *Straton* v. *New*, that this section of the Bankruptcy Act was inapplicable to straight bankruptcy proceedings. And in referring to what the opposite conclusion would bring about, the Court said at page 521:

> "Moreover such an interpretation would lead in many cases to a division of authority between state and federal courts. Thus in this case the state court would remain in charge of the foreclosure and the bankruptcy court would have exclusive control over the receiver's receipts. An interpretation which leads to a division of authority so fraught with conflict will not be readily implied."

GARDNER V. STATE OF NEW JERSEY IS INAPPLICABLE TO PRESENT CASE

The petitioner argues at length in his brief that the case of *Gardner* v. *State of New Jersey*, U. S., decided January 20, 1947, 91 Law Ed. U. S. Advance Opinions, 410; 15 U. S. Law Week 4171, "warrants the granting of his petition for a writ of certiorari."

The *Gardner* case was a 77B railroad reorganization proceeding. But it is not like the present case in many respects, the chief difference being that there was no litigation pending in a state court to enforce whatever tax liens the State of New Jersey may have had on the railroad property when the railroad filed its 77B reorganization petition. True there had been considerable litigation over the taxes involved as set out in *In Re Central Railroad Company of New Jersey*, 152 F. (2d) 408, 408 to 411, and the Circuit Court of Appeals decision in the same case, but each and every prior litigation case concerned petitions to abate or reduce taxes or tax valuations. Not one of them concerned an action or suit in a state court to collect the tax by tax lien foreclosure or otherwise. As clearly stated in the first paragraph of the United States Supreme Court opinion, the railroad corporation "filed its petition for reorganization in 1939 shortly after receiving notice from the Attorney General of New Jersey that he would apply to a state court for a summary judgment for unpaid taxes of the debtor and seek to sell its property in satisfaction of the judgment." In other words, there was no suit pending in the state against the property of the railroad to enforce a lien. New Jersey was just about to start one when 77B reorganization intervened. So there was no conflict of jurisdiction.

Secondly, the *Gardner* v. *New Jersey* case differs from this case in another important aspect. After the 77B reorganization, New Jersey "invoked the aid of the bankruptcy court by offering a proof of claim and demanding its allowance." It was the "actor" and as such had to abide by the judgment of the reorganization court on its own proof of claim. But in the instant case, the Town of Agawam never consented or submitted to the jurisdiction of the bankruptcy court. (R. pp. 8, 12, 91.) It has consistently relied on the Land Court decrees.

Thirdly, *Gardner* v. *New Jersey* in no way conflicts with *Straton* v. *New*, 283 U. S. 318. It cites the first part of the *Straton* v. *New* decision as outlined in paragraph 1 on page 14 of this brief in support, but it had no occasion to refer to the last part of the *Straton* v. *New* decision as outlined in paragraph 2 on said page 15 for the simple reason that there did not appear in the case a conflict of jurisdiction with a state court arising out of a tax lien foreclosure commenced in the state court four months prior to the reorganization petition.

Gardner v. *New Jersey* in no way refutes or changes the well recognized law that when a court of competent jurisdiction has a res in custodia legis, such res is withdrawn from the jurisdiction of all other courts, which though of concurrent jurisdiction, may not disturb that possession; and that it is the right and duty of the court originally acquiring jurisdiction to proceed to final decree and determine all questions relating to title, possession and control of the property.

Other cases that the petitioner relies upon to advance its contentions that the bankruptcy court has

paramount jurisdiction over state courts and that a bankruptcy adjudication ipso facto ousts a state court of jurisdiction and enjoins all state court proceedings involving the bankrupt are: *Isaacs* v. *Hobbs Tie and Timber Co.*, 282 U. S. 734; *Gross* v. *Irving Trust Co.*, 289 U. S. 342; *Steelman* v. *All Continent Corp.*, 301 U. S. 278; *Meyer* v. *Fleming*, decided February 4, 1946, 90 Law Ed. 423, 66 S. Ct. 382, 14 L.W. 4132; *Van Huffel* v. *Harkelrode, Treasurer*, 284 U. S. 225.

It is true that in the case of *Isaacs* v. *Hobbs Tie and Timber Co.*, 282 U. S. 734, at 737, the Court said "Upon adjudication, title to the bankrupt's estate vests in the trustee with actual or constructive possession and is placed in the bankruptcy court. . . . It follows that the bankruptcy court has exclusive jurisdiction to deal with property of the bankrupt estate."

Every case cited by the court to support that statement concerned cases that were brought in the state court after bankruptcy adjudication. And continuing in the same paragraph in the *Isaacs* case as the above quoted statements appear, the Court said (282 U. S. 734, at 737):

> "This is but an application of the well recognized rule that when a court of competent jurisdiction takes possession of property through its officers, this withdraws the property from the jurisdiction of all other courts which, though of concurrent jurisdiction, may not disturb that possession; and that the court originally acquiring jurisdiction is competent to hear all questions respecting title, possession and control of the property."

That is the very principle that the Town of Agawam contends: that the Land Court having first acquired

jurisdiction can not have its jurisdiction disturbed by the bankruptcy court. And *Straton* v. *New*, 283 U. S. 318, very clearly points out that the *Isaacs* case applies to cases brought into state courts *after* the bankruptcy proceedings are commenced. *Heffron* v. *Western Loan and Building Co.*, 84 F. (2d) 301, certiorari denied, 299 U. S. 597. In the *Isaacs* case, the suit to foreclose a mortgage on land in a state court was begun after the owner had been declared bankrupt.

In *Gross* v. *Irving Trust Company*, 289 U. S. 342, and *Taylor* v. *Sternberg*, 293 U. S. 470, it was held that where receivership proceedings are brought in a state court and within four months thereafter bankruptcy proceedings are brought in the federal courts, the bankruptcy court as a court of paramount jurisdiction ousts the state court of its jurisdiction.

The obvious reason why the bankruptcy court was declared to have paramount jurisdiction in the *Gross* and *Taylor* cases is that The Constitution (Art. I, Sec. 8, cl. 4) does vest Congress with paramount authority to make uniform laws concerning bankruptcies; that when Congress enacts a bankruptcy act that act is therefore supreme; and, when the courts exercise jurisdiction conferred upon them by such a statute, they are exercising a paramount and exclusive jurisdiction. But it is necessary that the jurisdiction so exercised be within the powers conferred upon the courts and within the terms of the bankruptcy act. And when liens on property are more than four months old and state court proceedings are commenced four months or more before bankruptcy in the state courts, no provision of the ordinary bankruptcy act authorizes the bankruptcy court to oust the state court of jurisdiction in proceedings to enforce liens valid under the very terms (Sec.

67a-1) of the bankruptcy act. The Congress has the constitutional power to make the federal courts all paramount over the state courts as it has exercised in the enactment of the Frazier-Lempke Act providing that upon the filing of a petition under section 75 of the Bankruptcy Act, all the property of the farmer becomes immediately subject to the "exclusive" jurisdiction of the federal court. Bankruptcy Act, Sec. 75(N) (11 U.S.C. s. 203 N). But no such power is given the federal courts in the ordinary bankruptcy sections of the act over state courts enforcing liens more than four months old by proceedings begun four months before bankruptcy. The Congress has limited the jurisdiction of the bankruptcy court in the same manner as it has limited its powers in other bankruptcy matters. *Taubel-Scott-Kitzmiller Co.* v. *Fox*, 264 U. S. 426.

Steelman v. *All Continent Co.*, 301 U. S. 278, 291, does not sustain the petitioner's claim. It is authority for the contention that the court which first gets jurisdiction retains it. The court held that a bankruptcy court, having jurisdiction, can issue an injunction directed against a suitor, and not a court, if the "suitor is misusing a jurisdiction which by hypothesis exists, and converting it by such misuse into an instrument of wrong" for "suits as well as transfers may be protective coverings of fraud." There is no claim in this case that the Town of Agawam did not properly invoke two and a half years or more before the bankruptcy adjudication the jurisdiction of the Land Court to enforce its statutory rights—or that the Land Court had a hypothetical jurisdiction over the res—or that any attempt was made to misuse the Land Court into an instrument of wrong. The consideration that the Land Court

gave this bankrupt in making the extensions over a period of more than two years to allow it to redeem, shows quite the contrary.

Myer v. *Fleming*, decided on February 4, 1946, 90 Law Ed. 423, 66 S. Ct. 382, 14 L.W. 4132, cited by the petitioner is likewise not applicable to the present case. It was a stockholder's derivation suit instituted before 77B reorganization; it did not concern the enforcement of a lien on particular property of the debtor brought in a state court before the 77B proceedings. The debtor was only a nominal party.

Van Huffel v. *Harkelrode, Treasurer*, 284 U. S. 225, cited by the petitioner, is authority for the sale of lands owned by the bankrupt free and clear of liens, including tax liens. But in that case it did not appear that the tax collector had invoked the powers of the state court. If in the instant case, bankruptcy had intervened in 1941 before the tax lien foreclosure proceedings started in the Land Court, the bankruptcy court could sell the assets free and clear of tax liens acquired by the town in 1939 under the authority of the *Van Huffel* case. But when the state court's powers were invoked to foreclose the tax lien and that court had jurisdiction of the parties and the res two and a half years before bankruptcy, the *Van Huffel* case is not authority for the ousting of the state court of its jurisdiction and its power to proceed to final decree.

Decisions of lower courts that support the respondent's argument above set forth are:

Heffron v. *Western Loan and Building Co.*, (9th Cir.) 84 F. (2d) 301. Certiorari denied November 16, 1936, 299 U. S. 597. (Mortgage foreclosure one day

after bankruptcy held valid when mortgage was more than four months old, following *Straton* v. *New*, 283 U. S. 318, and differentiating *Gross* v. *Irving Trust Co.*, 289 U. S. 342, and *Isaacs* v. *Hobbs Tie & Timber Co.*, 282 U. S. 734.)

Muffler v. *Petticrew Real Estate Co.*, (6th Cir.) 132 F. (2d) 479. Certiorari denied June 7, 1943, 319 U. S. 766. (Mortgage foreclosure proceedings commenced in state court more than four months before bankruptcy, and pending at the time of adjudication, held valid and bankruptcy court did not have jurisdiction to stay the state court proceedings.)

Bryan v. *Speakman*, (5th Cir.) 53 F. (2d) 463. Certiorari denied, 285 U. S. 539.

In Re Greenlie-Halliday Co., (2nd Cir.) 57 F. (2d) 173. This was another foreclosure suit in a state court which held that the state court having constructive possession of the res and having been the first one to acquire jurisdiction has the power to hear and determine all controversies relating thereto and for a time disables other courts of coordinate jurisdiction from exercising like power. The court then adds: "In bankruptcy, as in equity, one court will not snatch a res from another's mouth."

In Re Maier Brewing Co., Inc., (9th Cir.) 65 F. (2d) 673. Certiorari denied, 290 U. S. 695.

Dannel v. *Wilson-Weesner-Wilkinson Co.*, (6th Cir.) 109 F. (2d) 364.

In Re Tinkoff, (7th Cir.) 141 F. (2d) 731.

In Re Drusilla Carr Land Corp., (7th Cir.) 107 F. (2d) 565.

LAND COURT HAD CONSTRUCTIVE JURISDICTION AND POSSESSION OF THE RES.

The tax liens in this case were security for the taxes due. Massachusetts General Laws (Ter. Ed.) c. 60, s. 37 (quoted in Appendix). *Donovan* v. *Haverhill*, 247 Mass. 69. The Land Court is the only court under Massachusetts law with power to enforce tax liens. Massachusetts General Laws (Ter. Ed.) c. 60, s. 64 (quoted in Appendix). It is a court of record. Massachusetts General Laws (Ter. Ed.) c. 185, s. 1. "It has exclusive jurisdiction of the proceedings to foreclose the rights of redemption from tax titles under c. 60 (see s. 64)." *Bell* v. *Eames*, 310 Mass. 642, 645.

The Land Court had not only jurisdiction of the parties but prior constructive jurisdiction of the res. The petitions to foreclose the tax title rights of redemption described the particular property. The tax takings described the particular property (R. p. 50). In accordance with state law notices were recorded in the registry of deeds that petitions had been filed in the Land Court (R. p. 51). Furthermore, citations were issued by the Land Court to all persons interested in the land and the Agawam Racing and Breeders' Association, Inc. appeared, answered, and actively participated in the hearings for over two years. These acts are of equivalent import to actual seizure and they stand for and represent the dominion of the Land Court over the particular properties and subject them to the control of the Land Court. They gave the Land Court constructive possession. *Cooper* v. *Reynolds*, 10 Wall 308, 317, where the court said:

> " . . . while the general rule in regard to jurisdiction in rem requires the actual seizure and

> possession of the res by the officer of the court, such jurisdiction may be acquired by acts which are of equivalent import, and which stand for and represent the dominion of the court over the thing and in effect subject it to the control of the court. Among the latter class is the levy of a writ of attachment or seizure of real estate, which being incapable of removal, and lying in the territorial jurisdiction of the court, is for all practical purposes brought under the jurisdiction of the court by the officer's levy of the writ and return of that fact to the court."

See also *In Re Maier Brewing Co.*, 65 F. (2d) 673 (9th Cir.); *Dannel* v *Wilson-Weesner-Wilkinson Co. et al.*, 109 F. (2d) 364 (6th Cir.).

The property was in custodia legis of the Land Court. And it is "a settled principle that no other court is allowed to interfere with property thus in custodia legis." *Chandler* v. *Perry*, 74 F. (2d) 371, 372.

This being so, we conclude this part of the argument by referring to the recent case of *Heiser* v. *Woodruff*, decided by the United States Supreme Court on April 22, 1946, 66 Sup. Ct. Rep. 853; 90 L. Ed. Adv. Ops. 828; 14 U. S. Law Week 4316. In connection with this case it is pointed out that the Land Court litigation of two or more years before adjudication was followed by the appearance in the Land Court by the receiver of the bankrupt who filed pleadings for a stay of proceedings in the Land Court, was fully heard by the Land Court, and the issue decided against him by that court. (R. p. 53.) It is pointed out that by the decision in the *Heiser* v. *Woodruff* case, the matter has become res adjudicata for in the *Heiser* case, the court says at 856:

"But we are aware of no principle of law and equity which sanctions the rejection by a federal court of the salutary principle of res adjudicata, which is founded upon the generally recognized public policy that there must be some end to litigation and that when one appears in court to present his case, is fully heard, and the contested issue decided against him, he may not later renew the litigation in another court. *Baldwin* v. *Traveling Men's Association*, 283 U. S. 522, 525-526.

"And it is well settled that where the trustee in bankruptcy unsuccessfully litigates an issue outside the bankruptcy court, the decision against him is binding on the bankruptcy court. *Davis* v. *Friedlander*, 104 U. S. 570; *Fischer* v. *Pauline Oil Co.*, 309 U. S. 294, 302-303."

And on page 858, "But it is quite another matter to say that the bankruptcy court may reexamine issues determined by the judgment itself. It has, from an early date, been held to the contrary."

The Town of Agawam urges that the principles of the *Heiser* case and the other cases cited be adopted by holding that the federal court has no jurisdiction to disturb the Land Court decrees or the matter is res adjudicata.

The prior 77B proceedings had no effect on Land Court proceedings for reorganization plan was approved and consummated prior to the accrual of taxes, and tax title foreclosure proceedings in Land Court did not commence until three years thereafter.

No question was raised by the petitioner or the district court that the Land Court did not have proper jurisdiction over the tax title foreclosure proceedings.

After the hearing in the Circuit Court of Appeals, at the request of the court, the parties submitted memoranda and further briefs and the Circuit Court of Appeals found (R. pp. 91 and 92) that the plan of reorganization of the debtor had been approved on December 27, 1937, and consummated before July 1, 1938,—three years before the Land Court proceedings were started. And yet though all the reorganization acts were performed, the formality of entering a final decree never was made. The Circuit Court of Appeals found that the Land Court was unfettered by any prior jurisdiction as the result of the 77B reorganization proceedings (R. p. 92) because "the confirmation and consummation of the plan of reorganization suffice to effect a release of the reorganized corporation's property from the jurisdiction of the bankruptcy court."

This conclusion of law is sustained by seven decisions of the Circuit Court of Appeals for the Second Circuit and by one of the Circuit Court of Appeals for the Third Circuit.

North American Car Corporation v. *Peerless Weighing and Vending Machine Corporation*, (2nd Cir.) 143 F. (2d) 938, at 940, holds that "it is the confirmation and consummation of the plan which is the culminating point of the entire proceedings; and it is unnatural, as well as inequitable, to deny finality to a fully consummated plan until the court chooses to write 'finis' in some formal legal language for the clerk to copy into the court records . . . ." Debtors can not be held "in tutelage indefinitely."

In Re Ambassador Hotel Corporation, (2nd Cir.) 124 F. (2d) 435.

Baker's Share Corporation v. *London Terrace*, (2nd Cir.) 130 F. (2d) 157, holding that the reorganization court can not reserve to itself power to adjudicate controversies between the reorganized debtor and future creditors.

Reese v. *Beacon Hotel Corporation*, (2nd Cir.) 149 F. (2d) 610, holding that any reservation of jurisdiction beyond what is requisite to effectuate a plan of reorganization is beyond the power of the reorganization court.

Towers Hotel Corporation v. *Lafayette National Bank*, (2nd Cir.) 148 F. (2d) 145.

In Re Flatbush Avenue-Nevins St. Corporation, (2nd Cir.) 133 F. (2d) 760.

See also *Continental Bank and Trust Company of New York* v. *Scotch Presbyterian Church*, 57 N. Y. S. (2d) 128.

Bell v. *Roberts*, (3rd Cir.) 112 F. (2d) 585, holding that "when the reorganization was consummated the protecting hand of the bankruptcy court was withdrawn from the new company and its assets"—and it directed a creditor of the reorganized debtor to go into the state court to enforce his claim for the federal court did not have jurisdiction.

Clinton Trust Co. v. *John H. Elliott Leather Co.*, (2nd Cir.) 132 F. (2d) 299, holding that upon confirmation and consummation of the plan the debtor is a "reorganized debtor" and not a "debtor in possession" and the reorganization court is not authorized to exer-

cise control over the management of the reorganized debtor's business.

The case of *Meyer* v. *Kenmore Hotel Co.*, 297 U. S. 160, cited by the petitioner, is not in conflict with the eight Circuit Courts of Appeals decisions above cited. The issue in that case involved a right to appeal to a Circuit Court of Appeals from a District Court order confirming a 77B plan of reorganization. The court held that the confirmation of a plan was but a step in the administration of the debtor's estate. On page 165 the Court said: "The release of the debtor in a reorganization proceeding is contingent upon the performance of its part of the reorganization plan."

If the debtor wanted to obtain a discharge of its old debts and liabilities, he should obtain a final decree. But when the reorganization plan is consummated, title of the debtor's property passes to new mortgagees, trust indenture holders, or whatever persons are employed to carry out the plan. To hold that nothing passes until the final decree is entered would invalidate the claims of the new mortgagee and trust indenture holders. And as a practical matter, when property passes from a "debtor in reorganization" to a "reorganized debtor" upon consummation of the plan, jurisdiction of the reorganization court over the res so transferred ceases because of the variety of reasons given in the eight Circuit Courts of Appeals decisions.

CONCERNING THE BANKRUPT'S RIGHTS TO A STAY OF PROCEEDINGS IN THE LAND COURT

The petitioner on page 20 of his brief states that under Section 11e (11 U. S. C. Sec. 29e), 1940 of the

Bankruptcy Act, the bankruptcy estate was entitled to a stay of proceedings of not less than sixty days. However, in his brief he does not argue that the denial of the petition to stay would invalidate the subsequent foreclosure decree of the Land Court although in the petition for the writ of certiorari (page 7, paragraph 5) he poses the question. The Circuit Court of Appeals (R. p. 96) said that a section of said section 29e "would seem to indicate that if the period of redemption was still open after June 19, 1944, the trustee was entitled to a stay of the Land Court proceedings for sixty days after adjudication of bankruptcy in order to decide whether redemption was advisable and if so to act accordingly."

By Sec. 11(e) of the Bankruptcy Act the trustee is given sixty days after the adjudication to act in a state court proceeding or by applicable federal or state law, for taking any action, filing any claim or pleading, or doing any act, and where in any such case such period had not expired at the date of the filing of the petition in bankruptcy . . . ."

This is a new provision of the Bankruptcy Act. *Collier on Bankruptcy*, 14th Edition, Volume 1, s. 11.13, pages 1185, 1189, says it marks an entirely new departure in bankruptcy and is designed to cover certain special situations so as to give the trustee sixty days' time to decide whether to do or not to do a certain act.

It appears in this case that four days after adjudication the receiver determined to apply for a stay of proceedings (R. p. 53) and went to a hearing on his petition seven days after adjudication, and his petition for a stay was denied (R. p. 53). Now if the Land Court erred, his rights were to appeal by way of exceptions to the Supreme Judicial Court of Massachu-

setts (Massachusetts General Laws [Ter. Ed.] c. 231, s. 113), and an appeal was so taken on August 8, 1944, (R. p. 53) and the petitioner had until October 13, 1944 (R. p. 54)—ninety-one days after the adjudication—to effect his appeal. The trustee failed to perfect his appeal in the ninety-one day period and the decree of the Land Court, consequently, was a final decree and made the matter "res adjudicata." "Its (the Land Court's) decisions and decrees in subject matters within its jurisdiction can not be attacked collaterally." *Bell* v. *Eames*, 310 Mass. 642, 645. See also *Angel* v. *Bullington*,—U.S.—decided February 17, 1947, 15 L. W. 4247; *Heiser* v. *Woodruff*,—U.S.—decided April 22, 1946, 66 Sup. Ct. Rep. 853; 90 L. Ed. Adv. Ops. 828; 14 U. S. Law Week 4316. And in Massachusetts a judgment *in rem* is binding on all the world, and such an "adjudication is held to be conclusive upon the facts which are made the ground of the judgment, when those facts are again brought in question in ulterior or collateral proceedings." *Salem* v. *Eastern Railroad*, 98 Mass. 431, 449. *Butrick, petitioner*, 185 Mass. 107, 113. *Sheehan Construction Co.* v. *Dudley*, 299 Mass. 51.

Furthermore it appears in evidence that on July 19, 1944, the Referee in Bankruptcy enjoined the Town of Agawam from selling or in any way disposing of the property. (R. pp. 9, 17, 44, 57.) That injunction still stands and is one of the subjects of this petition. Its effect was that the res remains in status quo.

So by the attempted appeal to the Supreme Judicial Court and by the injunction, the trustee in bankruptcy had far more than sixty days to decide whether or not to redeem the tax title. The section of the Bankruptcy Act above quoted does not direct a state court to stay

proceedings; rather it gives a federal statutory right to the trustee to redeem the tax title in sixty days. Under the circumstances of this case, the trustee could have done so within the sixty day period, but he did not. The question has become moot. The trustee had every opportunity to redeem within the sixty day period, if he had decided to do so. Even if this issue were properly here, in a proceeding reviewing alleged errors of the Land Court, it would be harmless error.

ALLEGED CONFLICT OF DECISIONS

The petitioner claims that the decision of the Seventh Circuit Court of Appeals in *In Re Argyle-Lake Shore Building Corp.*, 78 F. (2d) 491, is in conflict with the decision made in this case by the Circuit Court of Appeals for the First Circuit.

Judge Mahoney in the Circuit Court of Appeals proceeding in this case (R. p. 95) very carefully pointed out that the *Argyle-Lake Shore* case is not in conflict. The Illinois statute on Revenue provided for the sale of the property on which there were delinquent taxes and further provided that real property so sold might be redeemed within two years after such sale, or after the expiration of two years at any time up to the date a tax deed was issued. It was necessary to apply to the State Superior Court after the expiration of the two year period or to the purchaser at the tax sale to obtain his deed. In the *Argyle-Lake Shore* case the two year period after the tax sale expired on September 7, 1934. On September 25, 1934, creditors filed in the federal court a petition for the reorganization of the debtor and it was not until November 13, 1934, that Cook County filed its petition in the State Superior Court for its tax deed. The reorganization court then enjoined

the proceeding in the state court, which as stated above was started subsequent to reorganization proceeding. Consequently, the *Argyle-Lake Shore* case is not in conflict.

The petitioner also cites as a case in conflict a District Court case, the *Hotel Charles* case, 12 F. Supp. 19 (D. Mass. 1935). (See subsequent proceedings at 12 F. Supp. 734 [D. Mass. 1935] and 84 F. [2d] 589 [C.C.A. 1st] 1936.) No state court proceeding existed before the reorganization proceeding in the *Hotel Charles* case. The city petitioned the reorganization court for leave to go into the Land Court to foreclose its tax lien, but the reorganization court, as the court that first obtained jurisdiction, retained it.

CERTIORARI DENIED IN SIMILAR CASES—LAW IS SETTLED BY DECISION OF STRATON v. NEW, 283 U. S. 318.

There is but slight difference between a proceeding to foreclose a statutory right of redemption and one to foreclose a mortgagor's interest in property. As the Circuit Court of Appeals held (R. p. 93), both come within the doctrine of *Straton v. New*, 283 U. S. 318. And this Court has denied certiorari in cases concerning real estate mortgage or other lien foreclosures where the issue was the same as the issue in this case, to wit, that prior jurisdiction by a state court over the res is not divested by subsequent bankruptcy proceedings. Those cases are:

Muffler v. *Petticrew Real Estate Co.*, (6th Cir.) 132 F. (2d) 479. Certiorari denied June 7, 1943, 319 U.S. 766.

Heffron v. *Western Loan and Building Co.*, (9th Cir.) 84 F. (2d) 301. Certiorari denied November 16, 1936, 299 U.S. 597.

Bryan v. *Speakman*, 53 F. (2d) 463 (5th Cir.). Certiorari denied February 23, 1932, 285 U. S. 539.

In Re Maier Brewing Co. Inc., 65 F. (2d) 673 (9th Cir.). Certiorari denied November 20, 1933, 290 U. S. 695.

The other cases cited on page 24 of this brief show that the Circuit Courts of Appeals apply the law involved with unanimity. And this Court in the clear and forceful language appearing in the last paragraph of *Straton* v. *New*, 283 U. S. 318, at 331, certainly has settled the law involved.

THE MATTER OF FORFEITURE

Throughout the petition for a writ of certiorari and the petitioner's brief, he appeals that a forfeiture is involved. In addition to what Judge Mahoney wrote in the Circuit Court of Appeals decision (R. pp. 96 and 97), the respondent would like to point out (1) that nowhere in the record is it contended that the taxes were not legally assessed and levied; (2) that under the law of Massachusetts the taxpayer is given every opportunity to appeal to the Appellate Tax Board (*City of Springfield* v. *Hotel Charles*, 84 F. [2d] 589, 591) for abatement of taxes if he considers the valuation too high; (3) that if he fails to pay a real estate tax for one year, the collector's sale or taking does not take place until the following year and then two years must elapse before the town can proceed in the Land Court to foreclose the property (Massachusetts General Laws [Ter. Ed.] c. 60, s. 65, quoted in Appendix) and then the Land Court is empowered (General Laws [Ter. Ed.] c. 60, s. 68, quoted in Appendix), after hearing the parties, to extend the time allowing the party to redeem. From the decree of the Land Court,

appeal may now be taken by way of exceptions to the Supreme Judicial Court (General Laws [Ter. Ed.] c. 231, s. 113) and from decisions of the Appellate Tax Board to the highest court (General Laws [Ter. Ed.] c. 58A, s. 13). The record discloses that the bankrupt never filed petitions for abatement of taxes with the assessors nor filed appeals with the Appellate Tax Board questioning the amount of the taxes levied.

The bankrupt had from October 1, 1938, until June 14, 1944,—five years and seven months—to pay its taxes and redeem its property. The holders of the $108,000 mortgage (R. p. 69) could also have redeemed in that period (General Laws [Ter. Ed.] c. 60, s. 58). The fact that the Land Court judge (sometimes by stipulation) gave the taxpayer two years to redeem after the case was ripe for decree in the Land Court demonstrates the fairness of the judge and of the Town in dealing with the taxpayer.

True the taking of a taxpayer's property is a forfeiture. But the federal government as well as state and local governments have to employ lien, distraint and forfeiture measures to collect their taxes. (26 U.S.C. s. 3670 to 3726, inclusive.) The power of the state to tax and raise revenue is essential to its political existence and the essence of the prosperity of the state. (*Nicol* v. *Ames*, 173 U. S. 509, 515.) The state is left to choose its own methods of taxation and the form and manner of enforcing payment of the public revenues subject, so far as the federal power is concerned, to the restricting regulations of the Constitution of the United States; and state laws permitting the taxpayer to appear and be heard at some stage of the proceedings have been held to satisfy the requirements of due process of law. *Kentucky Union Company* v. *Common-*

wealth of Kentuky, 219 U. S. 140; *Security Trust and Safety Vault Co* v. *Lexington*, 203 U. S. 323.

Massachusettsgives its taxpayers ample opportunity to be heard before its administrative boards and its courts not only on questions relating to the tax itself but the means ofcollection. The bankrupt availed itself of the opportunities offered concerning redemption of its lands from the tax title, and was given patient and thoughtful consideration by the Land Court and the Town.

CONCLUSION

The decision of the Circuit Court of Appeals is so clearly correct that no further review would be warranted. The petition for a writ of certiorari should therefore be dened.

Respectfully submitted,

TOWN OF AGAWAM

By DONALD M. MACAULAY

Its Attorney.

March, 1947

APPENDIX

UNITED STATES CONSTITUTION

Article 1, Section 8. "The Congress shall have power . . . to lay and collect taxes, duties, imposts and excises . . . to establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States."

BANKRUPTCY ACT

Section 2 (a) (15)—U. S. Code, Title 11, Chapter 2, Section 11. "The courts of the United States hereinbefore defined as courts of bankruptcy are hereby created courts of bankruptcy and are hereby invested, within their respective territorial limits as now established or as they may be hereafter changed, with such jurisdiction at law and in equity as will enable them to exercise original jurisdiction in proceedings under this Act, in vacation, in chambers, and during their respective terms, as they are now or may be hereafter held, to—."

"Make such orders, issue such process, and enter such judgments, in addition to those specifically provided for, as may be necessary for the enforcement of the provisions of this Act: *Provided, however,* That an injunction to restrain a court may be issued by the judge only;—."

Section 11e—U. S. Code, Title 11, Section 29e. "A receiver or trustee may within two years subsequent to the date of adjudication or within such further period of time as the Federal or State law may permit, institute proceedings in behalf of the estate upon any

claim against which the period of limitation fixed by Federal or State law had not expired at the time of the filing of the petition in bankruptcy. Where, by any agreement, a period of limitation is fixed for instituting a suit or proceeding on any claim, or presenting or filing any claim, proof of claim, proof of loss, demand, notice, or the like, or where in any proceeding, judicial or otherwise, a period of limitation is fixed, either in such proceeding or by applicable Federal or State law, for taking any action, filing any claim or pleading, or doing any act, and where in any such case such period has not expired at the date of the filing of the petition in bankruptcy, the receiver or the trustee of the bankrupt may, for the benefit of the estate, take any such action or do any such act, required of or permitted to the bankrupt, within a period of sixty days subsequent to the date of adjudication or within such further period as may be permitted by the agreement, or in the proceeding or by applicable Federal or State law, as the case may be."

Section 67 (a-1)—U. S. Code, Title 11, Chapter 7, section 107 (a-1). "Every lien against the property of a person obtained by attachment, judgment, levy, or other legal or equitable process or proceedings within four months before the filing of a petition in bankruptcy or of an original petition under chapter X, XI, XII, or XIII of this Act by or against such person shall be deemed null and void (a) if at the time when such lien was obtained such person was insolvent or (b) if such lien was sought and permitted in fraud of the provisions of this Act. *Provided, however*, That if such person is not finally adjudged a bankrupt in any proceeding under this Act and if no arrangement or plan is proposed and confirmed, such lien shall be deemed

reinstated with the same effect as if it had not been nullified and voided."

Since the decree of confirmation of the reorganization plan and the consummation of the plan were before June 22, 1938, the effective date of the Chandler Act, the old Section 77B (Act of June 7, 1934) applied.

Subsection "a" of old section 77B provided that the court "shall, during the pendency of the proceedings under this section, have exclusive jurisdiction of the debtor and its property wherever located for the purposes of this section, and shall and may exercise all the powers, not inconsistent with this section, which a Federal Court would have had it (a) appointed a receiver in equity of property of the debtor by reason of its inability to pay its debts as they mature." (See U. S. C. A., Title 11, s. 511.)

Subsection h of old Section 77B (now under Chandler Act, U. S. C. A., Title 11, Sections 624, 626, 627, 628) reads as follows:

"(h) Upon final confirmation of the plan, the debtor and other corporation or corporations organized or to be organized for the purpose of carrying out the plan, shall have full power and authority to, and shall put into effect and carry out the plan and the orders of the judge relative thereto, under and subject to the supervision and control of the judge, and the property dealt with by the plan, when transferred and conveyed by the trustee or trustees to the debtor or the other corporation or corporations provided for by the plan, or, if no trustee has been appointed, when retained by the debtor pursuant to the plan or transferred by it to the other corporation or corporations provided for by the plan, shall be free and clear of all claims of the debtor,

its stockholders and creditors, except such as may consistently with the provisions of the plan be reserved in the order confirming the plan or directing such transfer and conveyance or retention, and the court may direct the trustee or trustees, or if there be no trustee, the debtor and any mortgagee, the trustee of any obligation of the debtor, and all other proper and necessary parties, to make any such transfer or conveyance, and may direct the debtor to join in any such transfer or conveyance made by the trustee or trustees. Upon the termination of the proceedings a final decree shall be entered discharging the trustee or trustees, if any, making such provisions as may be equitable, by way of injunction or otherwise, and closing the case. Such final decree shall discharge the debtor from its debts and liabilities, and shall terminate and end all rights and interests of its stockholders, except as provided in the plan or as may be reserved as aforesaid."

GENERAL LAWS OF MASSACHUSETTS TERCENTENARY EDITION CHAPTER 60

Section 37. Lien of Tax upon Real Estate, Levy by Sale, Validity of Title.—Taxes assessed upon land, including those assessed under sections twelve, thirteen and fourteen of chapter fifty-nine, shall with all incidental charges and fees be a lien thereon from January first in the year of assessment. Said taxes, if unpaid for fourteen days after demand therefor, may, with said charges and fees, be levied by sale or taking of the real estate, if the lien or liens thereon have not terminated.

Section 53. Taking for Taxes; Notice.—If a tax on land is not paid within fourteen days after demand

therefor and remains unpaid at the date of taking, the collector may take such land for the town, first giving fourteen days' notice of his intention to exercise such power of taking, which notice may be served in the manner required by law for the service of subpoenas on witnesses in civil cases or may be published, and shall conform to the requirements of section forty. He shall also, fourteen days before the taking, post a notice so conforming in two or more convenient and public places.

Section 54. Instrument of Taking, Form, Contents, Effect.—The instrument of taking shall be under the hand and seal of the collector and shall contain a statement of the cause of taking, a substantially accurate description of each parcel of land taken, the name of the person to whom the same was assessed, the amount of tax thereon, and the incidental expenses and costs to the date of taking. Such an instrument of taking shall not be valid unless recorded within sixty days of the date of taking. If so recorded it shall be prima facie evidence of all facts essential to the validity of the title so taken, whether the taking was made on or before as well as since July first, nineteen hundred and fifteen. Title to the land so taken shall thereupon vest in the town, subject to the right of redemption. Such title shall, until redemption or until the right of redemption is foreclosed as hereinafter provided, be held as security for the repayment of said taxes with all intervening costs, terms imposed for redemption and charges, with interest thereon, and the premises so taken, both before and after either redemption or foreclosure, shall also be subject to and have the benefit of all easements and restrictions lawfully existing in, upon or over said land or appurtenant thereto, and,

except as provided in section seventy-seven, all covenants and agreements running with said premises either at law or in equity, when so taken.

Section 64. Tax Title to Be Absolute after Foreclosure.—The title conveyed by a tax collector's deed or by a taking of land for taxes shall be absolute after foreclosure of the right of redemption by decree of the land court as provided in this chapter. The land court shall have exclusive jurisdiction of the foreclosure of all rights of redemption from titles conveyed by a tax collector's deed or a taking of land for taxes, in a proceeding provided for in sections sixty-five to seventy-five, inclusive.

Section 65. Petition for Foreclosure of Rights of Redemption under Tax Title.—After two years from a sale or taking of land for taxes, except as provided in section sixty-two, whoever then holds the title thereby acquired may bring a petition in the land court for the foreclosure of all rights of redemption thereunder. Such petition shall be made in the form to be prescribed by said court and shall set forth a description of the land to which it applies, with its assessed valuation, the petitioner's source of title, giving a reference to the place, book and page of record, and such other facts as may be necessary for the information of the court. Two or more parcels of land may be included in any petition brought by a town, whether under a taking or as purchaser of such title or titles, if such parcels are in the same record ownership at the time of bringing such petition.

Section 66. Examination of Title, Notice, etc.—Upon the filing of such a petition the court shall forthwith cause to be made by one of its official examiners an

examination of the title sufficient only to determine the persons who may be interested in the same, and shall upon the filing of the examiner's report notify all persons appearing to be interested, whether as equity owners, mortgagees, lienors, attaching creditors or otherwise, of the pendency of the petition, the notice to be sent to each by registered mail and return of receipt required, the addresses of respondents, so far as may be ascertained, being furnished by the petitioner. Such other and further notice by publication or otherwise shall be given as the court may at any time order. The notice, to be addressed "To all whom it may concern," shall contain the name of the petitioner, the names of all known respondents, a description of the land and a statement of the nature of the petition, shall fix the time within which appearance may be entered and answer filed, and shall contain a statement that unless the party notified shall appear and answer within the time fixed a default will be recorded, the petition taken as confessed, and the right of redemption forever barred.

Section 68. Answer, Offer to Redeem, Finding of Court for Redemption.—Any person claiming an interest, on or before the return day or within such further time as may on motion be allowed by the court, shall, if he desires to redeem, file an answer setting forth his right in the land, and an offer to redeem upon such terms as may be fixed by the court. Thereupon the court shall hear the parties, and may in any case in its discretion make a finding allowing the party to redeem, within a time fixed by the court, upon payment to the petitioner of an amount sufficient to cover the original sum, costs, interest at the rate of six and one half per cent per annum, and all subsequent taxes, costs and

interest to which the petitioner may be entitled under section sixty-one or sixty-two, together with the costs of the proceeding and such counsel fee as the court deems reasonable. The court may impose such other terms as justice and the circumstances warrant.

Section 69. Decree Barring Redemption, When.—If a default is entered under section sixty-seven, or if redemption is not made within the time and upon the terms fixed by the court under the preceding section, or if at the time fixed for the hearing the person claiming the right to redeem does not appear to urge his claim, or if upon hearing the court determines that the facts shown do not entitle him to redeem, a decree shall be entered which shall forever bar all rights of redemption.

CHAPTER 185

Section 1. The land court shall be a court of record. It shall have exclusive original jurisdiction of the following matters:

(b) Proceedings to foreclose tax titles, under chapter sixty.

CHAPTER 231

Section 135. Preparation and Transmission of Necessary Papers to Full Court of Supreme Judicial Court; Entry of Case. . . . . In order to carry any question of law from the supreme judicial court when held by a single justice or from any other court to the full court of the supreme judicial court upon appeal, exception, reservation, report or otherwise as authorized by law, the party having the obligation to cause the necessary papers hereinbefore specified to be prepared shall give

to the clerk, recorder, register or other appropriate official of the court in which the case is pending, within ten days after the case becomes ripe for final preparation and printing of the record for the full court, an order in writing for the preparation of such papers and copies of papers of transmission to the full court of the supreme judicial court. As soon as may be after receiving such written order, the clerk or other official shall make an estimate of the expense of the preparation and transmission of the necessary papers and copies of papers aforesaid and shall give such party notice in writing of the amount of such estimate. Such party, within twenty days after the date of such notice from the clerk or other official, shall pay to him the amount of such estimate and such further amount beyond such estimate as the clerk or other official may find to be then due for such preparation. The clerk or other official then without delay shall prepare the papers and copies of papers aforesaid for transmission and when they are ready shall give notice in writing of such fact to the party ordering them, who, within five days after the date of such notice, shall pay to the clerk or other official any balance then due therefor and shall enter the case in the supreme judicial court for the commonwealth, or for the proper county. The court in which the case is pending, or any justice or judge thereof, may, for cause shown after hearing, extend the time for doing any of the acts required by this paragraph. The entry of the case shall not, except as otherwise provided by law, transfer the case, but only the question to be determined.